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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS ARMANDO AGUILAR,

Defendant and Appellant.

G052067

(Super. Ct. No. 10HF1247)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James Edward Rogan, Judge. Affirmed.

Jared G. Coleman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr., and Stacy Tyler, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Luis Aguilar of rape of an intoxicated person (Pen. Code, § 261, subd. (a)(3).)¹ Aguilar contends the trial court erred in awarding victim restitution for dental expenses because his criminal conduct did not proximately cause the injury. For the reasons expressed below, we affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

On the evening of November 20, 2009, K.B. went to a Costa Mesa nightclub with her husband and a female friend. K.B. and her husband walked outside when K.B. became extremely intoxicated. Aguilar, a club employee, approached the couple and offered to escort K.B. back inside the nightclub to wait with the friend while her husband left to get food at a nearby restaurant. Later, while K.B.'s husband was away, Aguilar approached K.B.'s friend and said "something was wrong" with K.B. He took the friend to a restroom, where she found K.B. locked in a bathroom stall. K.B. came out and said, "I think I had sex with that guy," and then began vomiting into the bathroom sink. The friend noticed one of K.B.'s front teeth was broken. K.B. told her friend and husband Aguilar had raped her.

Aguilar spoke to the police and initially denied having sexual contact with K.B. After DNA results showed otherwise, he claimed K.B. forced herself on him, backed herself into him, pulled aside her panties, and inserted his penis into her vagina. After the sex, he "just put her in the bathroom" and left her. He denied knowing how her tooth got broken.

Following trial in February 2015, the jury convicted Aguilar as noted above. In June 2015, the trial court sentenced Aguilar to a six-year midterm for rape and

¹ The jury also convicted him of battery (§ 242 [count 2]) based on a separate incident occurring on a different date. We omit the facts of that incident because they do not pertain to the sole issue on appeal.

ordered him to pay \$1,515 in restitution for mental health counseling (\$700) and dental work (\$815).

II

DISCUSSION

The Trial Court Did Not Err in Awarding K.B. Restitution for Her Broken Tooth

Aguilar's trial counsel objected to restitution for K.B.'s dental work, asserting "there was no causal link or causation between" Aguilar's actions and the broken tooth. The prosecutor responded K.B.'s tooth was not broken when K.B.'s husband entrusted K.B. to Aguilar, and "the only reason she is in the bathroom by herself in the state that she is in is that" Aguilar "instead of taking her to her friend, which was the agreement, took her into the hallway and raped her. [¶] So the fact that she is then in the bathroom by herself, with no one to care for her and her tooth ends up broken, I think is [Aguilar's] responsibility" After taking the matter under submission, the trial court ordered Aguilar to pay the full amount of K.B.'s requested restitution.

Aguilar contends K.B. broke her tooth after he raped her and therefore "the broken tooth was not a foreseeable consequence of the criminal act," and "[t]he clear proximate cause of the injury was [K.B.'s] self-induced intoxication" He states K.B. "was just as likely to have broken her tooth while vomiting in the bathroom due to her intoxication if the crime had not occurred."

Penal Code section 1202.4 provides in relevant part: "(a)(1) It is the intent of the Legislature that a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime. [¶] . . . [¶] (f) . . . [I]n every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. . . . The court shall order full restitution unless it finds compelling and extraordinary reasons

for not doing so and states them on the record. . . . [¶] (3) To the extent possible, the restitution order . . . shall be of a dollar amount that is sufficient to fully reimburse the victim . . . for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following: . . . [¶] (B) Medical expenses. . . . [¶] . . . [¶] (g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. . . . [¶] . . . [¶] (i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.” (See Cal. Const., art. I, § 28, subd. (b)(13)(B) [“Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.”].)

The trial court must order restitution for losses arising out of the criminal conduct for which the defendant has been convicted. (*People v. Lai* (2006) 138 Cal.App.4th 1227, 1247; see *People v. Woods* (2008) 161 Cal.App.4th 1045, 1049.) The trial court determines whether the defendant's criminal conduct is a “substantial factor” causing the injury or loss. (*Mitchell v. Gonzales* (1991) 54 Cal.3d 1041, 1044, fn. 2, 1052, fn. 7; *People v. Jones* (2010) 187 Cal.App.4th 418, 425.) ““The substantial factor standard is a relatively broad one, requiring only that the contribution of the individual cause be more than negligible or theoretical.”” (*People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1321-1322 [even “a very minor force” causing harm “is a substantial factor”].) An injury may have more than one cause, and multiple causes can combine to cause harm. (*Ibid.*)

The standard of review of a restitution order is abuse of discretion. “A victim's restitution right is to be broadly and liberally construed.” (*People v. Mearns* (2002) 97 Cal.App.4th 493, 500.) “When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by

the reviewing court.”” (*Id.* at p. 499; *People v. Millard* (2009) 175 Cal.App.4th 7, 26; *People v. Dalvito* (1997) 56 Cal.App.4th 557, 562.)

The trial court acted well within its discretion. Aguilar volunteered to escort K.B. back to her friend while her husband went for food. K.B. was severely intoxicated and could not stand or walk without assistance. Rather than take her to the friend, Aguilar raped her, and then left her unattended in a bathroom. It was foreseeable K.B., grossly impaired and traumatized by the sexual assault, would injure herself by falling or bumping into something. As the Attorney General argues, “Had he not taken [K.B.] away from [her husband], [the husband] would have continued caring for her. Had he not raped [her], he would not have needed to stash her in a bathroom away from [her friend, husband and] other potential Good Samaritans. Had [K.B.] not been alone in the bathroom, she would not have struck her mouth on a porcelain object and broken her tooth. In other words, [Aguilar’s] willful criminal conduct was a substantial factor in causing [K.B.’s] broken tooth.”

Aguilar suggests the trial court’s order makes a criminal defendant responsible for “every harm that follows a criminal act.” We disagree. Rather than entrusting K.B. to her friend or other responsible person after the rape, he left her unattended in the restroom, where she broke a tooth. There was no evidence she injured herself while under the friend’s supervision. Here, Aguilar’s contribution to K.B.’s injury was more than negligible or theoretical. The trial court did not abuse its discretion in concluding Aguilar’s conduct was a substantial cause of the dental injury she suffered.

III

DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.